SUPREME COURT, U. S.

Supreme Court, U.S.
FILED
OCT 27 1971
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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. 71-5921

KENNETH R. GIZA,

Petitioner

v.

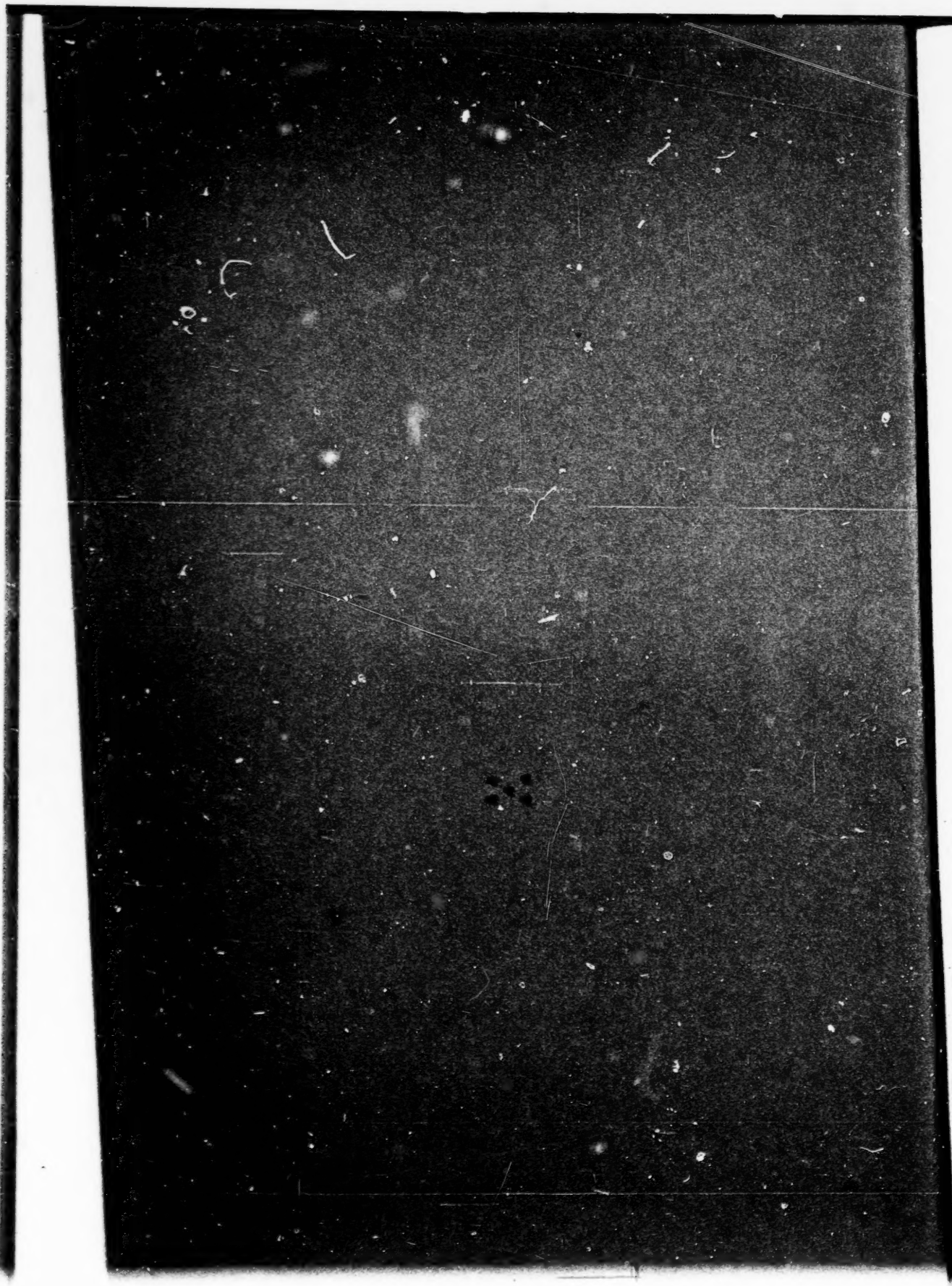
STATE OF CALIFORNIA and
EVELLE J. YOUNGER as Attorney General
of the State of California

PETITION FOR A WRIT OF CERTIORARI

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Counsel for Petitioner

October, 1971



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I. INTRODUCTION.

Petitioner Kenneth R. Giza is accused of committing three counts of first degree murder in the County of Riverside, State of California at a time when petitioner was in fact incarcerated and had been incarcerated for some ten months in San Quentin Prison in the State of California.

It is contended by the prosecution that three young boys found a destructive device (hand grenade) on the premises of petitioner's former residence. This device exploded, killing all three. Petitioner is currently confined in the Riverside County Jail.

Petitioner is not permitted meaningful visitation by his attorneys. Petitioner contends that other prisoners in the jail are permitted visitation by their defense attorneys. Petitioner contends that he is denied similar visitation.

Petitioner contends that he has been denied the right to be adequately represented

by counsel under the Sixth Amendment to the United States Constitution, in that his counsel is only permitted to consult with him in a tiny room separated by "one-way" glass, speaking only into a "box with holes," able only to slide one piece of paper at a time to and from his counsel, and that he has been deprived of his right to equal protection of law in that other attorneys, similarly situated, are permitted to confer with their clients in the Riverside County Jail under satisfactory circumstances in a larger room not separated by glass or other partitions.

II. STATEMENT OF CASE.

Petitioner is the defendant in the case of People v. Giza, No. CR 8754 in the Superior Court for the County of Riverside. The Indictment alleges in count one that on September 24, 1970 he did murder Ricky Lee Leamon with malice aforethought (Penal Code Section 187); in count two that on September 24, 1970 he did murder

Bobby Lee Ewing with malice aforethought (Penal Code Section 187); in count three that on September 28, 1970 he did murder Walter David Crawford with malice aforethought (Penal Code Section 187); and in count four that "during November 1969" he did possess a dangerous destructive device (Penal Code Section 12303). Petitioner is also charged with having suffered a prior conviction of sale of marijuana, a felony (Health & Safety Code Section 11531), on December 16, 1969 in the Superior Court for the County of Riverside.

A copy of the Indictment, marked Exhibit "A," is attached hereto, and by this reference incorporated herein.

On February 12, 1971 Petitioner's attorney, Philip Kassel, wrote the Riverside Superior Court requesting that he be allowed reasonable access to petitioner, stating that he was hopeful that the matter could be resolved informally, but that, if not, he would move the court for its order requiring reasonable access

on February 18, 1971. (See attached Exhibit "B," by this reference incorporated herein). Points and Authorities in support of this informal motion were filed February 18, 1971. (See attached Exhibit "C," by this reference incorporated herein.)

My Minute Order dated February 25, 1971 petitioner's "Motion for Reasonable Access Between Attorney and Client" was denied (See attached Exhibit "D," by this reference incorporated herein).

On March 19, 1971 an evidentiary hearing on the matter was held. The leaders of the Riverside Criminal Defense Bar Association, seven attorneys, testified that they were permitted access with their clients for the purpose of consultation in the preparation of their cases. The evidence indicated that the petitioner was not afforded similar opportunities nor were his attorneys afforded use of the attorney visitation room which was used by other attorneys and prisoners. The

court at this evidentiary hearing called counsel before the bench and indicated that the petitioner's position was correct, but that the Honorable Judge John Neblett did not wish to have differences with the Riverside Sheriff's Office. He indicated and suggested that the matter be taken up on appeal. By Minute Order dated April 8, 1971, the court denied petitioner's motion "pursuant to Section 825 of the Penal Code and for reconsideration of the prior denial of defendant's motion under said section, . . ." (See attached Exhibit "E," by this reference incorporated herein.

On June 28, 1971 a Petition for Writ of Habeas Corpus and Points and Authorities was filed in the Court of Appeal, Fourth District, Division II, seeking to compel the sheriff of Riverside County to permit petitioner to confer with his counsel in a room of size adequate for consultation with both attorneys face to face, not separated by glass. On July 1, 1971 the petition was denied without opinion.

(See attached Exhibit "F," attached hereto and by this reference incorporated herein.)

On July 15, 1971 a Petition for Hearing on Writ of Habeas Corpus and Points and Authorities were presented for filing in the Supreme Court of the State of California. On July 28, 1971 the hearing on this petition was denied without opinion. (See attached Exhibit "G," attached hereto and by this reference incorporated herein).

Jury trial on this matter is currently set for November 15, 1971 in the Riverside Superior Court.

III. STATEMENT OF FACTS.

At the evidentiary hearing held March 19, 1971 seven witnesses were called and three declarations were filed. Except as otherwise indicated, the following references in brackets are to the page and line of the transcript of these proceedings. A copy of this transcript will be lodged with this Honorable Court at the

time this petition is filed. The following facts, summarized therefrom, are deemed relevant to a proper determination of the question presented by this petition:

(1) Arthur E. Lester [3:20], attorney for twenty-two years, testified that he has defended serious criminal cases for a number of years and is familiar with the counsel visitation rooms in the Riverside County Jail [4:12]. In his opinion the rooms are not adequate for the preparation of a defense because they are small and very restricted, because the sound situation is particularly "atrocious," [5:1] the inmates believe the place is "bugged," [5:5] it is very difficult to get some people on some occasions to relate critical facts [5:5-6], and people in adjoining booths are able to overhear conversations [5:7-9]. This witness also testified that, on some occasions, the small, windowless rooms in the interior of the jail have been used [6:3-6].

(2) Carl R. Yoder [8:12], attorney

practicing in Riverside, also does criminal defense work and is familiar with the jail visitation rooms [9:7-9]. He testified that the visitation rooms are not "adequate" [10:17-27] because it is difficult to show your client anything [11:2-3] and it is difficult for him to work with you on anything such as to go over a list or a statement [11:4]. There is also lack of privacy [11:10]. On other occasions he has been permitted to use other rooms for conferences with his clients in the Riverside County Jail [11:19-21].

(3) Jay P. Grossman [13:3], attorney with the Riverside County Public Defender's Office, testified that, in his opinion, the booths were not adequate [13:25-28; 14:1]. His reasons were the difficulty of passing on paper work [14:4] and the difficulty of hearing and talking [14:9].

(4) Robert David Keller [16:16], also an attorney with the Riverside County Public Defender's Office, testified that the rooms are inadequate in preparing a defense

[17:10-13]. He noted the difficulty of hearing [17:15], the difficulty of writing while you are talking because of the narrowness of the desk [17:15-20], and the difficulty of hearing [17:21-25]. On occasion he has been permitted to use "interview booths," normally used by probation officers and policemen [18:5-17]. There is nothing there between the inmate and the interviewer. On the date of this testimony (March 19, 1971), he had been denied the right to use the "interview rooms," although no reason was given [19:4-7].

(5) Thomas Victor Flaherty [20:3], an attorney practicing in Riverside and who does considerable criminal defense work, also feels the booths are inadequate for the same reasons previously expressed [20:22-25; 20:26-28], but he also stated that the contact with a client "becomes very artificial and communication becomes a very conscious effort instead of flowing easily." [21:1-9]. It is very time-consuming, and that, when he is in the

matron's ward, he conducts his interviews thirty to fifty percent faster [21:10-15].

(6) Michael F. Flynn [23:8] is also an attorney with the Public Defender's Office and testified, for the same reasons, that the booths are inadequate [24:3-12].

(7) George E. Steele [25:9] attorney with the Public Defender's Office for Riverside County, testified that the booths are inadequate for essentially the same reasons previously stated [26:3-9], plus an additional reason: it is difficult to establish the confidence of your client when you are so isolated [26:9-13].

Additionally, a Declaration of petitioner's attorney, Donald W. Jordan, Jr. was filed (See attached Exhibit "H," by this reference incorporated herein), and the Declaration of Precy Sellas (See attached Exhibit "I," by this reference incorporated herein), and the Declaration of Attorney Ralph Sugimura (See attached Exhibit "J," by this reference incorporated herein), as well as the Declaration of Captain

Norman Canova of the Riverside County Sheriff's Department (See Exhibit "K," attached hereto, and by this reference incorporated herein).

IV. QUESTION PRESENTED.

IS A PERSON IN CUSTODY DENIED THE RIGHT TO BE EFFECTIVELY REPRESENTED BY COUNSEL WHEN HE IS ALLOWED TO CONFER WITH HIS COUNSEL ONLY IN A NON-SOUNDPROOF ROOM IN A JAIL ONLY 43 x 30-35" WIDE, SEPARATED FROM COUNSEL BY THICK, TRANSLUCENT GLASS, UNABLE TO HAVE MORE THAN ONE COUNSEL PRESENT AT A TIME UNLESS ALL STAND, UNABLE TO EXCHANGE PAPER EXCEPT ONE SHEET AT A TIME THROUGH A NARROW SLOT, UNABLE TO COMMUNICATE AUDIBLY EXCEPT BY SPEAKING LOUDLY INTO A BOX WITH SMALL HOLES, WHERE THE CUSTODIAN OF THE JAIL HAS THREE INTERVIEW ROOMS ADEQUATE FOR THE PURPOSE AND THE ONLY REASONS GIVEN AGAINST THEIR USE IS THAT IT WOULD "REQUIRE HAVING A GUARD ON DUTY DURING THE INTERVIEW," THAT, "ONE OF THE PROBLEMS" IS THE "PASSING OF CONTRABAND FROM ATTORNEY TO CLIENT," AND THE ASSERTION THAT,

"THE USE OF THESE ROOMS REDUCES THE SECURITY OF THE INSTITUTION," NOTWITHSTANDING THEIR USE BY OTHER PERSONS INCLUDING PROBATION OFFICERS, PHYSICIANS AND OTHER ATTORNEYS?

V. POINTS AND AUTHORITIES.

A. PETITIONER IS BEING DENIED HIS RIGHT TO EFFECTIVE REPRESENTATION BY COUNSEL.

Under the Sixth Amendment to the United States Constitution, every person accused of crime is entitled to be represented by counsel at all critical stages of the criminal proceedings.

Gideon v. Wainwright (1963) 372 U.S. 335 [19 A.L.R.2d 733].

Every infringement on this representation which prevents the representation from being "effective representation," is constitutionally impermissible.

Powell v. Alabama (1932) 287 U.S. 45, 71 [84 A.L.R. 527].

Petitioner faces three of the most serious charges known to our jurisprudence. The case revolves around three young boys who apparently found a hand grenade in the backyard of a residence which formerly belonged to petititioner, which exploded. Petitioner at the time was confined to San Quentin Prison nearly 500 miles away. The issues involved are complex, factually and legally.

As has been shown, petitioner and his counsel have tried for some time to effect the simple task of arranging some place where petitioner and both his counsel can adequately meet in privacy. Permission has been granted to other persons and their counsel to meet in interview rooms, but permission has consistently been denied to petitioner. In view of the serious issues involved, petitioner respectfully submits that the following authorities indicate that the denial of petitioner's request amounts to an infringement of his Sixth Amendment right to effective representation by counsel.

"A fundamental part of the constitutional right of an accused to be represented by counsel is that his attorney must be afforded reasonable opportunity to prepare for trial."

In re Ochse (1951) 38 Cal.2d 230, 231.

"[T]he California right to counsel requires an effective, not a mere pro forma appointment. Counsel must be afforded time and opportunity for investigation and consultation with defendant in the preparation of the defense [Citations omitted.] and opportunity to consult freely with defendant during the trial [Citation omitted]."

People v. Mattson (1959) 51 Cal.2d 777, 790, fn. 5.

In re Qualls (1943) 58 Cal.App.2d 330.

In re Rider (1920) 50 Cal.App. 797.

To assist him, the Ochse case points out that counsel may have the aid of experts, of physicians, of interpreters, and others. Because the very nature of preparing a defense

requires a full and candid disclosure of the facts, any communication between a defendant and his attorney must be completely confidential and the contents of the communications may not be disclosed. Because of the importance on these matters, "[i]t is the court's duty to provide adequate quarters and facilities, which the court has the power to do without limitation."

People v. Zammora (1944) 66 Cal.App.2d 166, 235.

In re Snyder (1923) 62 Cal.App. 697 is similar to the instant case in that petitioner there asked that "a reasonable opportunity be afforded [petitioner] to consult privately with his counsel and to prepare for his defense." The case dealt with an inmate of the Los Angeles County Jail. All such inmates were required to communicate with their counsel across a table through a wire-mesh screen. Partitions had not been provided separating the space occupied by one person from that occupied by persons on either side of him. The court found that the

screen did not prevent a clear observation of the facial expressions of one person by the other, or interfere in any substantial manner with free conversations, but noted that it did prevent any "documents, papers, or other articles being passed through it, . . ." and that it was difficult to read papers through it. In granting habeas corpus the court stated:

> While the room is now equipped with the table and screen furnishes adequate and reasonable facilities for the ordinary conversations and consultations between attorneys and their clients, it must be apparent to any one that it does not permit of that privacy that must prevail quite frequently in conferences between those accused of crime and their legal advisors. One of the constitutional rights vouchsafed to all persons under criminal charge is the right to the advise and assistance of counsel, and the opportunity to adequately prepare for their defense. This right, we submit, would be denied them if they are compelled to hold consultations with their attorneys within the hearing of others, and without any opportunity to receive, exchange, sign, examine, or read legal documents and other writings. [Id. at 699.]

The court also recognized that the purpose of the installation of the screen was to "prevent

the passing into [the] jail of narcotics, weapons, and other articles forbidden by the authorities." The court stated that it appreciated the difficult task of the officers in this respect and its desires not to interfere with them in this "commendable work," but stated that such efforts "must be performed in subordination to the constitutional rights of others." The court added:

> We are fully pursuaded that some plan can be provided by the authorities which will adequately protect the county jail from the introduction therein of such articles as may be forbidden, and at the same time not entrench upon the right of those confined therein to every privilege accorded them by the laws of our state. [Id. at 701.]

An additional point raised in Snyder was that the relief should not be given because the attorney had given no reason why he heeded such privacy. The court responded, "[N]o attorney should be compelled to disclose to any person any fact which would directly or indirectly effect the defense of his client. To require the

attorney to give to the officer in charge of the jail, the reason why he desired a private consultation with his client, might in some cases lead to the disclosure of information of vital importance to the client, the knowledge of which should be confined to the client and to those to whom he voluntarily communicates the same." [Id. at 701.]

See also: In re Rider, supra, 50 Cal. App. 797 [Pointing out that it is an illegal bridgement for an officer to insist on being present during attorney-client communications.].

In re Qualls, supra, 58 Cal.App.2d 330 [Visitations may not be restricted to hours outside of those "which attorneys usually devote to their professional labors."].

11 Op.Atty.Gen. (Calif.) (1948) 146 ["The sheriff in charge of prisoners must, upon the request of a prisoner or his counsel, permit the prisoner at all reasonable times to consult privately with his attorney and under such

circumstances as will afford reasonable opportunity for absolute privacy of consultation. To this end, he may require conformity to reasonable rules and regulations for the government of the jail."].

Such problems have been the subject of an annotation contained in 5 A.L.R.3d 1360. In this annotation it is stated:

> Physical obstructions placed between the defendant and his counsel may render ineffective the defendant's right to communicate with counsel or may operate to encroach on the privacy of a communication so as to amount to a deprivation of the accused' constitutional rights. [Id. at 1373-1374].

Discussed in the annotation is Ellis v. State (1946) 149 Tex.Crim. 583 [197 S.W.2d 351]. In this case, defendant had been convicted of robbery. Prior to trial defendant's counsel was permitted to communicate with defendant only within the confines of a small room approximately four feet square separated by an 18" square glass with wire mesh with no opening so that documents could

be passed from one to the other. The court held that this restriction violated defendant's constitutional right to effectively communicate with his counsel (although affirming the conviction because no prejudice was shown and because, immediately prior to trial, defendant was given a right to communicate unrestrictedly for two hours with his attorney).

B. PETITIONER IS BEING DENIED THE EQUAL PROTECTION OF THE LAWS.

The Fourteenth Amendment to the United States Constitution, Section 1, provides: ". . . No state shall . . . deny to any person within its jurisdiction the equal protection of the laws."

In his Declaration, (See attached Exhibit "K,"), Captain Canova acknowledges that other attorneys have had access to their clients, then confined to Riverside County Jail, in interview rooms other than the attorney-client rooms. He simply states that a number of inmates

charged with 187 P.C. (murder) is higher now than it has been in the past, and that because of the "high risks involved during the current period, these special facilities have not been made available to Mr. Giza or to Mr. Kassel."

Petitioner respectfully submits that this is insubstantial and inadequate to justify different treatment among inmates and their counsel.

Gideon v. Wainwright, supra, 372 U.S. 335 [19 A.L.R.2d 733.].

Gardner v. California (1969) 393 U.S. 367 [21 L.Ed.2d 601.].

VI. CONCLUSION.

Certain attorneys in Riverside County are permitted free and open access to visitation rooms for the purpose of visiting their clients and preparation of their case. The petitioner is not afforded this same opportunity.

Petitioner has also been advised by the Riverside Sheriff's Office that the facilities

provided for visitations by petitioner and his attorneys are in fact fitted with listening devices. The Riverside Sheriff's Office has in fact recorded conversations between the petitioner and his family. These taped statements have been played to petitioner's attorneys. Petitioner feels that his communications with his counsel are given in a room and place where the said conversations can be listened to at the will and pleasure of the Riverside Sheriff. The sheriff acknowledges that these rooms are equipped with listening devices.

In all cases, but particularly in a case such as the instant case where petitioner is being represented by two counsel, the right to free and untrammeled communication between attorney and client is paramount. Certainly a situation could be imagined where a particular attorney or a particular defendant in custody could be given a restricted right to communicate. However, in the instant case, no showing has been made or even attempted, showing how jail

security would be jeopardized by permitting use of the interview rooms by petitioner and his counsel. This fact is accented further by virtue of the fact, that on other occasions, other counsel are permitted to confer with their clients in the regular interview rooms.

Under the foregoing authorities, and for the foregoing reasons, petitioner respectfully prays that Certiorari issue:

1. Commanding that petitioner be provided a place in the jail where he and his counsel may confer fully and privately, so that petitioner may adequately prepare his defense with the advice and consultation of his counsel, and that a place be made available on a reasonable basis as needed by petitioner and his counsel until his case is concluded and petitioner is removed from the jail; or

2. In the alternative, commanding that the California Supreme Court or Court of Appeal for the Fourth District, Division Two,

hear petitioner's Petition for Writ of Habeas Corpus.

Dated: October 23, 1971.

Respectfully submitted,
GARZA, KASSEL, JORDAN & WELEBIR

By:

PHILIP KASSEL

and

DONALD W. JORDAN, JR.

Counsel for Petitioner

Riverside, California
Telephone: 787-2525

JAN 12 1971
DONALD D. SULLIVAN, Clerk
By D. Price Deputy D. Price

COPY

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF RIVERSIDE

THE PEOPLE OF THE STATE OF CALIFORNIA
Plaintiff,
vs.
KENNETH RAY GIZA,
Defendant.

NO. CR- 8754
INDICTMENT

COUNT I

-------KENNETH RAY GIZA--------

is accused by the Grand Jury of Riverside County, State of California, by this Indictment of the crime of violation of Section 187 of the Penal Code, a felony,

committed as follows: The said KENNETH RAY GIZA,

in the County of Riverside, State of California, on or about September 24, 1970, did willfully, unlawfully, feloniously and with malice aforethought murder RICKY LEE LEAMON, a human being.

COUNT II

For a further and separate cause of action, being a different offense from but connected in its commission with the charges set forth in each of the other counts hereof, the said KENNETH RAY GIZA is accused by the Grand Jury of the County of Riverside, State of California, by this Indictment, of the crime of violation of Section 187 of the Penal Code, a felony, committed as follows: That the said KENNETH RAY GIZA, on or about the 24th day of September, 1970, at and in the County of Riverside, State of California, did willfully, unlawfully, feloniously and with malice aforethought murder BOBBY LEE LWING, a human being.

EXHIBIT A

BEST AVAILABLE COPY

COUNT XIV

For a further and separate cause of action, being a different offense from but connected in its commission with the charge set forth in each of the other counts hereof, the said KENNETH RAY GUZA is accused by the Grand Jury of the County of Riverside, State of California, by this Indictment, of the crime of violation of Section 187 of the Penal Code, a felony, committed as follows: That the said KENNETH RAY GUZA, on or about the 28th day of September, 1970, at and in the County of Riverside, State of California, did willfully, unlawfully, feloniously and with malice aforethought murder WALTER DAVID CRAWFORD, a human being.

COUNT XV

For a further and separate cause of action, being a different statement of the same offense as set forth in Counts I, II and III hereof, the said KENNETH RAY GUZA is accused by the Grand Jury of the County of Riverside, State of California, by this Indictment, of the crime of violation of Section 12303 of the Penal Code, a felony, committed as follows: That the said KENNETH RAY GUZA, during the month of November, 1969, at and in the County of Riverside, State of California, did willfully, unlawfully and feloniously possess a destructive device, to wit: Hand grenade.

PRIOR CONVICTION

The Grand Jury of the County of Riverside further charges that before the commission of the offenses charged in this Indictment and on or about the 16th day of December, 1969, the said KENNETH RAY GUZA was convicted in the Superior Court of the State of California, in and for the County of Riverside, of a felony, to wit: violation of Section 11531 of the Health and Safety Code, three counts, and that in pursuance of said conviction, the said KENNETH RAY GUZA is serving a term in the California State's Prison.

S/ [illegible]

Names of witnesses examined before the Grand Jury on finding the foregoing Indictment:

RAND DOLLINGER, M.D.
JAMES D. CARTER
CADET BRADING, R.P.D
WILLIAM L. HINES
A. J. DeWINDT
JOHN LEMMON
EARL CRAWFORD
DAVID F. FRY
G. D. KELLEY
DR. JAMES P. MARTIN

A TRUE BILL:

S/ IRVIN J. DICKSON
FOREMAN OF THE GRAND JURY

BEST AVAILABLE COPY

February 12, 1971

Hon. John Neblett, Judge
Riverside County Superior Court
Courthouse
Riverside, California

Re: People v. Kenneth R. Giza

Dear Judge Neblett:

The above entitled matter is presently set for hearing in your Department on Thursday, February 18, 1971 at 3:00 P. M. for a Motion for Change of Venue.

I have had certain problems in attempting to prepare for this motion. Primarily, I suffer somewhat from claustrophobia. In addition, my partner, Mr. Donald Jordan, Jr. is working with me on this motion and in the handling of this case, the attorney's visiting rooms in the Riverside Jail are hardly adequate for one attorney. There is no area to lay out papers or do any preparation work or adequate note taking. I spoke with the Captain in the jail and apprised him of my situation.

In the past, the jail has been most kind in permitting me to see my clients in one of the offices or other rooms in the jail. As I indicated to the Captain in Charge of the Jail, I have no objection to conducting my interview with officers present or in front of the booking desk. All I ask is that I have a little elbow room to lay out necessary work materials. I will be requesting a continuance on the aforementioned hearing date since I have not been able to prepare my brief with Points and Authorities because of the aforementioned problem.

I would hope that a formal court order would not be required to alleviate this situation but if such an order would be required, I would attempt to so move on the occasion of February 18, 1971 at 3:00 P. M.

I am sending a copy of this letter to the District Attorney so that he will be aware of my intended request for a Motion for Change of Venue.

Sincerely,

PK:MA
cc District Attorney, Riverside

PHILIP KASSEL

EXHIBIT B

Defendant

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, v. KENNETH RAY GIZA, Defendant.	No. CR 8754 POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR REASONABLE ACCESS BETWEEN ATTORNEY AND CLIENT (P C 825)

Penal Code Section 825 provides that:

"After such arrest, any attorney at law entitled to practice in the courts of record of California, may at the request of the prisoner or any relative of such prisoner, may visit the person so arrested."

Rider 62 CA 697

Pursuant to California Constitution, Article I, Section 13, and Penal Code Section 825, one accused of a felony is entitled to consult with his attorney in private without the presence of objectionable third persons, and the denial of such a right is the denial of the right to defend by counsel.

Ex parte Rider (1920) 50 Cal.App. 797.

People v. Downer (1962) 57 Cal.2d 800, 812.

Penal Code Section 636 provides that:

Every person, who, without permission from all parties to the conversation, eavesdrops on or records by means of an electronic or other device, a conversation, or any portion thereof,

EXHIBIT C

> between a person who is in the physical custody of a law enforcement agency or other public agency, and any such person's attorney. . ., is guilty of a felony; [inapplicable exception]."

Penal Code Section 2600 provides that even a person in State Prison may "correspond, confidentially, with any member of the State Bar, . . . provided that the prisonauthorities may open and inspect such mail to search for contraband."

Under the direction of the Sheriff of Riverside County, the only facilities made available for defendant herein in communication with his attorneys is in one of the several small room located in the Riverside County Jail. The dimensions of the portion of the room in which the attorney sits are as follows: 8 feet tall, 3 feet 7 inches deep, and (at entrance) 2 feet 6 inches and (at the divider between the attorney and the prisoner's portion) 2 feet 11 inches. The prisoner sits in a room which appears to be of similar dimensions. An attorney may see his client only through thick glass which is only partially transparent, giving, as it does, the appearance of being a one-way mirror. The dimensions of this thick plate of partially opaque glass are 2 feet wide and 3 feet high. Experiments indicate that this glass is virtually soundproof.

Audible communications with the client can only be conducted by speaking into a metal box approximately 10 inches long and 2 inches deep by 2 inches thick, in which, on the client's side, there are approximately 105 little holes, with approximately the same number on the prisoner's side. It is impossible to see anything except blackness in looking through the little holes and it is impossible to determine whether a microphone is concealed therein.

Under the window is a metal ledge approximately 10 inches wide by 23 inches long. On the middle of the ledge is a slot . . .

about 12 1/2 inches wide by 1/16 of an inch thick through which, apparently, papers can be handed, one at a time.

As the foregoing dimensions indicate, it is possible to have only one chair in each room and it would be virtually impossible for defendant's two attorneys to consult with defendant in such a room in any meaningful fashion.

See also In re Cleaver (1968) 266 Cal.App.2d 143, 161, and numerous cases cited therein.

CONCLUSION

For the foregoing reasons, defendant respectfully requests this court to declare such reasonable rules as it may deem proper in order to permit reasonable and meaningful communication between defendant and his attorneys.

Dated: February 18, 1971.

Respectfully submitted,

Philip Kassel
of GARZA, KASSEL, JORDAN & WELEBIR

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF RIVERSIDE

TITLE:	DATE & DEPT.	NUMBER:
PEOPLE vs KENNETH RAY GIZA	2-25-71 7	CR-8754
COUNSEL: District Attorney / Garza & Kassel	REPORTER: None	

PROCEEDING:
Ruling re: Motion for Reasonable Access Between Attorney and Client

Defendant's Motion argued on February 18, 1971 is denied.

Court determines that adequate and reasonable facilities are provided in the Riverside County Jail for conferences between Attorneys and their clients; That defendant has not established, to the satisfaction of the Court, that he cannot engage in meaningful communication with his Attorney in and within existing facilities.

/	R/A		CAL.	/	ATTY(S).	/	Jail & P.O.

NEBLETT, Judge

Adams, Clerk

FORM NO. 171, 2/64 MINUTES OF SUPERIOR COURT

EXHIBIT D

PEOPLE vs. KENNETH RAY GIZA | 4-8-71 7 | CR. 8754

COUNSEL: FOR PLAINTIFF H. Dabney Deputy DISTRICT ATTORNEY | FOR DEFENDANT Garza, Kassol, Jordan & Welebir

☐ ARRAIGNMENT
☐ CERTIFIED UNDER 859A P.C.
☒ FURTHER PROCEEDINGS RE Hrg 995 PC Motion

Violation of Section(s). (Counts & Degree)
187 PC (Cts I, II & III)
12303 PC (Ct IV)
PRIOR: 11531 H&SC (3 Cts)

Reporter: Judith Lienau

Defendant: ☒ Custody ☐ BAIL ☐ O/R

(The items checked indicate the proceedings had and the orders made by the Court.)

People represented as above, and defendant is _____ present with XXXXX counsel.

☐ Defendant states that his true name is (as shown) _____

☐ Court ☐ informs defendant as to his legal rights.
☐ is advised by counsel that defendant has been informed as to his legal rights.

☐ Court appoints ☐ Public Defender
☐ _____ to represent the defendant.

☐ Copy of the ☐ Information is provided to ☐ defendant.
☐ Indictment ☐ counsel for defendant.
☐ Transcript of Preliminary Hearing

☐ Defendant ☐ is arraigned. ☐ Information.
☐ through counsel, waives the reading of the ☐ Indictment.

☐ Motion to set aside the ☐ Information ☐ Indictment is _____

☐ Motion to Return Property and/or Suppress Evidence is _____

☐ Defendant withdraws Plea of _____ Guilty

☐ Defendant pleads ☐ Guilty as to Count
☐ Nolo contendere
☐ Not Guilty as to Count
☐ Not Guilty by Reason of Insanity.

☐ Count(s) _____ is (are) dismissed.

☐ Court, ☐ on its own motion, ☐ fixes degree of offense as _____ degree.
☐ upon sworn testimony of defendant, ☐ declares offense a misdemeanor.
☐ pursuant to stipulation,

☐ Defendant ☐ admits _____ prior conviction(s) of a felony.
☐ denies

☐ Proceedings are suspended for the purpose of determining whether or not defendant is a mentally disordered sex offender.
District Attorney ordered to prepare and file requisite documents.
Hearing thereon set for _____

☐ Proceedings are suspended for the purpose of determining the sanity of the defendant ☐ at the present time ☐ at time of the offense. Drs. _____ and _____ are appointed to examine the defendant and report their findings thereon to the Court not later than _____.

☐ It is stipulated that the Court may make its determination based upon the reports of the medical examiners.

☐ Referred to the Probation Officer for _____ investigation and report, returnable _____ to which time pronouncement of judgment is continued.

☐ Defendant waives statutory time for _____.

☐ Trial Date of _____ is ☐ vacated ☐ confirmed.

☐ Trial Readiness Calendar date of _____ is vacated.

☐ Case set for _____ days ☐ Jury trial ☐ Court trial, Jury waived, on _____ at _____. M. in Dept. _____.

☐ Case set on Trial Readiness Calendar of _____ at _____. M., in Dept _____.

☐ Bail is ☐ set at ☐ increased to ☐ reduced to $_____ plus $_____ statutory penalty assessment.
☐ exonerated ☐ forfeited ☐ remains as fixed

☐ Petition for Release on Own Recognizance is _____.

☐ Defendant is ☐ remanded to the custody of the sheriff. ☐ ordered released from custody of the sheriff.

☐ Sheriff is ordered to deliver defendant to Riverside County Jail, Riverside, California for purpose of examination by medical examiners.

☐ Bench Warrant ordered to issue; bail fixed in the amount of $_____ plus $_____ statutory penalty assessment;
☐ and stayed until _____.

☐ Court reserves jurisdiction re bail forfeiture.

☐ Bench Warrant ordered ☐ executed ☐ recalled and ☐ quashed.

☐ Defendant ordered to report to Probation Department forthwith.

☒ This matter advanced from the Calendar of 4-9-71 to this date for hearing oral motion for continuance of hearing date for 995 PC Motion.

x Defendant's Motion pursuant to Section 825 of the Penal Code and for reconsideration of the prior denial of Defendant's motion under said Section, heard on March 19, 1971, are, and each is denied.

BEST AVAILABLE COPY

EXHIBIT E

Court of Appeal—State of California

Fourth Appellate Division

DIVISION TWO

COURT OF APPEAL-FOURTH DIST.
FILED
JUL - 1 1971
JOHN R. McDOWELL, Clerk
Deputy Clerk

IN RE: KENNETH RAY GIZA on Habeas Corpus
xxxxx

4 Crim. No. 4827

BY THE COURT:

The Petition for Writ of Habeas Corpus is DENIED.

COPY

RECEIVED
JUL 2 - 1971
GARZA & KASSEL

Dated July 1, 1971

EXHIBIT F

Gabbert, J. Acting P.J.

Copy to:
County Clerk County of Riverside County, Courthouse, 92501
Attny. Genl., L.A., 90012
Distr. Attny., Courthouse, Riverside, 92501
Garza, Kassel, Jordan & Welebir, 505 Arrowhead Ave., Ste. 400, San Bernardino, 92401

46027-114 12-70 4M OSP

CLERK'S OFFICE SUPREME COURT
4250 STATE BUILDING

SAN FRANCISCO, CALIFORNIA 94102

JUL 28 1971

DEAR SIR: *I have this day filed Order*

HEARING DENIED

In re: 4 Crim No. 4827
Bija
vs. Hill
Habeas Corpus

Respectfully,

G E. BISHEL
Clerk

B-153-677 1-71 2M OSP

EXHIBIT S

GARZA, KASSEL, JORDAN & WELEBIR
Attorneys at Law
Suite 400
505 Arrowhead Avenue
San Bernardino, California 92401
(714) 888-0231

Attorneys for Defendant

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, v. KENNETH RAY GIZA, Defendant.	No. CR 8754 DECLARATION OF DONALD W. JORDAN, JR.

I, Donald W. Jordan, Jr., say:

I am an attorney at law admitted to practice in the State of California, and am one of the attorneys of record for defendant herein.

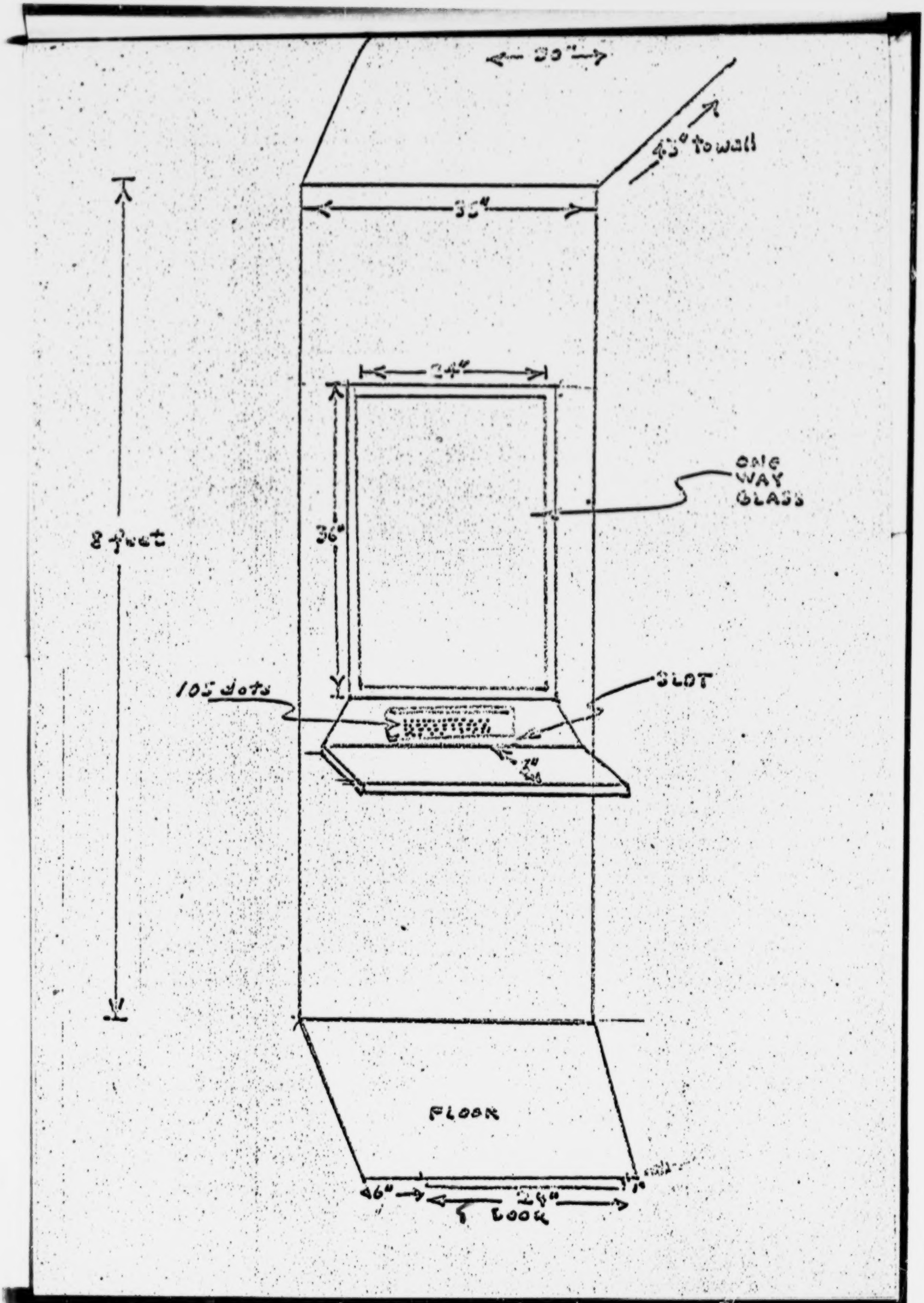
On February 19, 1971 I entered inmate-attorney visiting room 3 in the Riverside County Jail. With my tape measure, I measured the dimensions within the room approximately as shown on the attached diagram.

I declare the foregoing to be true and correct under penalty of perjury.

Dated: March 19, 1971.

Donald W. Jordan, Jr.
Attorney for Defendant

EXHIBIT H


33"
45° to wall
35"
34"
36"
8 feet
ONE WAY GLASS
105 dots
SLOT
2"
FLOOR
46"
24"
LOOK

GARZA, KASSEL, JORDAN & WELEBIR
Attorneys at Law
Suite 400
505 Arrowhead Avenue
San Bernardino, California 92401
(714) 888-0231

Attorneys for Defendant

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, v. KENNETH RAY GIZA, Defendant.	No. CR 8754 DECLARATION OF PRECY SELLAS

I, Precy Sellas, say:

I received a call from the law offices of Garza, Kassel, Jordan & Welebir concerning my going to the Riverside County Jail to photograph the inmate-attorney rooms therein and also about interviewing Kenneth Giza. I stopped by the offices of the law firm and received specific instructions, together with an authorization stating my authority to investigate and photograph the jail in the case of People v. Kenneth Ray Giza, Riverside Superior Court No. 8754. A copy of said authorization is attached hereto and by this reference incorporated herein.

On the morning of March 12, 1971 I arrived in Riverside and contacted the sheriff's office. I asked to speak to the Sheriff, Mr. Ben Clark, but was told he was not in. I then asked for the Undersheriff and a man finally came to the counter and asked me my business there. He told me to give him the

. . .

EXHIBIT I

original authorization which I did. I was then taken back to his office and the person then identified himself as Howard C. Smith, Chief of the Administrative Services for the sheriff. He called in the captain of the jail and later the captain and Mr. Smith left the room. They returned sometime later and I was told that I could go up to the jail and photograph the rooms. I asked about the interview with Giza and was told definitely, "No," that all I could do was photograph the rooms.

Mr. Smith could not understand why Mr. Jordan was making such a fuss over the rooms inasmuch as they had been approved and accepted by the Riverside Bar Association.

A sergeant in the jail division was then called and he was told that I was permitted to take photographs of the inmate-attorney rooms, and nothing else. I again explained to Mr. Smith that I was not a private investigator, but that I worked for the law firm of Garza, Kassel, Jordan & Welebir, that as such I needed to interview Mr. Giza, but again I was forbidden permission to interview Mr. Giza.

I then went directly to the jail and made the following photographs, all of which are fair and full representations of the objects portrayed therein:

(1) Photograph in jail area showing doors to inmate-attorney visiting rooms 2, 3, 4, 5 and 6. (2) Photo from other end of corridor showing doors to inmate-attorney visiting rooms 6. 5, 4, 3 and 2. (3) Photograph showing interior of portion of room 1 where attorney sits, showing two-way mirror through which attorney and client see one another, the little holes into the box through which the attorney and client speak, and under which is the slot (not visible) through which one paper at a time may be passed from one portion of the room to the other, and narrow ledge for laying out papers. (4) Similar showing of room 2. (5) Another showing of room 2. (6) Similar showing

rooms 6, 7. (7) Closeup of room 6. (8) Another view of room 6.

After I concluded taking the photographs I left the area and returned to San Bernardino.

I declare the foregoing to be true and correct under penalty of perjury.

Dated: March 19, 1971.

s/ Precy Sellas
Precy Sellas

• • •

• • •

RALPH SUGIMURA
Attorney at Law
3797 Tenth Street
Riverside, California

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE

THE PEOPLE OF THE STATE OF CALIFORNIA Plaintiff(s) vs. KENNETH RAY GIZA Defendant(s)	CASE NUMBER CR 8754 DECLARATION OF RALPH SUGIMURA

I, Ralph Sugimura, am an attorney, duly licensed to practice law in the various courts in the State of California. My present business address is 3797 Tenth Street, Riverside, California, 92506.

On or about March 16, 1971, I did receive and accept a subpena from Philip Kassel, Attorney at Law, to appear in Department VII on March 19, 1971 at 3:00 P.M. On that date prior to that hour, I did contact Mr. Kassel and the Hon. John Noblett and did inform both the Attorney and the Court that I did not feel well and based upon that I was excused from any appearance.

As of March 16, 1971, I did inform Mr. Kassel that I would be willing to testify as to the use of certain jail facilities under certain circumstances. That is in order to establish a firm and proper representation of the defendants under certain facts, the present interview facilities are inadequate and far too restrictive.

Should there be a problem or factual situation wherein the accused must be shown various documents, photographs, or charts, the present facilities are far to restrictive. Even far more important, should the accused be represented by more than one attorney, the present facility as such would not allow both attorneys within the interview booth to carry forth any productive conference.

EXHIBIT X

Having had the privilage of repreesenting various accused persons of various charges, I have found and determined that a conference with such defendant within the internal, larger and less confining facilities was far more productive. As an example, in the matters of Peo. V. Bandhauer and Peo. V. Denny, I was allowed various conferences with the defendants within the larger and less confining rooms. Upon those matters, there were times when Mr. Don Chapman, Attorney at Law, and I were allowed to use the internal facilities, or when a conference was necessary to read documents or inspect or view photographs I was allowed to enter the larger, less confining internal conference rooms alone. Naturally, I did obtain a special permit to carry forth such conferences.

It is my understanding in the present pending matter Mr. Kassel and Mr. Jordon, jointly and otherwise, have not been allowed to use the larger, less confining internal facilities of the jail.

Therefore, it is respectfully submitted that in order to establish and present an adequate defense under certain circumstances, council should be allowed to use the larger, less confining, internal facilities.

I declare under penalty of perjury the foregoing is true and correct.

Ralph Sugimura
Attorney at Law

COPY

BYRON C. MORTON
District Attorney
County of Riverside
Room 200, Law-Library Building
3535 7th Street
Riverside, California

Telephone: 787 2525

RECEIVED
MAR 24 1971
GARZA & KASSEL

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF RIVERSIDE

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. KENNETH RAY GIZA, Defendant.	NO. CR. 8754 DECLARATION IN OPPOSITION TO MOTION FOR REASONABLE ACCESS BETWEEN ATTORNEY AND CLIENT (P. C. 825)

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss

NORMAN R. CANOVA declares as follows:

That he is a Captain for the Riverside County Sheriff's Department, assigned as Commander in charge of the Riverside County Jail at Riverside, California;

That at this time, KENNETH R. GIZA is an inmate of said Riverside County Jail; that the facilities which are available to Mr. Giza's counsel are restricted to the normal attorney's booths for the following reasons: that the physical design of the Riverside County Jail is not conducive to the type of facility that is necessary for this type of prisoner; that the institution presently houses a total of sixteen persons charged with violation of Section 187 of the Penal Code; that the attorney's booths designed for reasonable access by the attorney and client and approved by the attorneys of the Riverside County Bar Associa-

ON C. MORTON
ICT ATTORNEY
'Y OF RIVERSIDE
OURTHOUSE
IDE, CALIFORNIA

EXHIBIT K

tion, are the only facility which do not require having a guard on duty during the interview; that the jail has three internal interview rooms, which are located directly in front of the security doors leading to the outside of the jail. To allow high risk prisoners and their attorneys the use of these rooms reduces the security of the institution.

In the past there have been occasions when an inmate charged with violation of Section 187 of the Penal Code has been allowed the use of other facilities during an attorney-client interview; that when this has occurred, it has been necessary to have the inmate look at numerous documents; also, at the time that these other facilities were made available, the number of inmates charged with 187 P. C. was not as high as at the present time; therefore, because of the high risks involved during the current period, these special facilities have not been made available to Mr. Giza or to Mr. Kassel.

Captain Canova further declares that the Riverside County Jail was originally designed to accomodate a maximum population of 350 inmates and that this number has increased over the past two months to an average population of more than 440, which fact increases the number of persons, such as Probation Officers, Parole Officers, Investigating Officers and others, who must use the internal interview rooms. As many as eight (8) Probation Officers, Parole Officers, etc., have been holding interviews with their clients in the hallways, drunk tank and any other space available because all interview rooms and attorney's rooms were being used and were occupied. With this increaseed activity within the jail, the security is reduced because of the constant flow of persons in and out of the institution. Therefore, restriction of the attorney-client interviews must be conducted in strict accordance with the jail rules.

That one of the problems in the jail at the present time

VRON C. HORTON
STRICT ATTORNEY
UNTY OF RIVERSIDE
COURTHOUSE
ERSIDE, CALIFORNIA

is the passing or contraband from attorney to client. The attorney does not know that he is passing contraband, i. e. a ball point pen. In the past pens have been given to inmates for the purpose of further communication between attorney and client; that the inmate unbeknownst to the attorney, uses the ball point pen in the following manners: the pens can be dismantled and the inner springs can be used for making weapons of many kinds, including a garrote and the pen itself is redesigned and made into a hypodermic device for the injection of narcotics; that therefore meaningless items, depending on their use, can be contraband in the eyes of jail personnel. Naturally many consequences flow from these acts, which increase the security problems within the jail.

NORMAN R. CANOVA declared under penalty of perjury that the foregoing is true and correct.

Executed on March 22, 1971, at Riverside, California

/s/ NORMAN R. CANOVA

ON C. MORTON
ICT ATTORNEY
'Y OF RIVERSIDE
OURTHOUSE
IDE, CALIFORNIA

PROOF OF SERVICE BY MAIL

I, Marlee Gibbon, say:

I am a citizen of the United States, over the age of 18 years and not a party to the within action. My business address is 505 North Arrowhead Avenue, San Bernardino, California 92401. On the date stated below, I mailed a copy of the attached PETITION FOR A WRIT OF CERTIORARI on the following named persons, by placing a copy of same in envelopes addressed as follows, with postage fully prepaid:

Honorable Evelle J. Younger
Attorney General of the State
of California
600 State Building
Los Angeles, California 90012

Supreme Court of the State of
California
4250 State Building
San Francisco, California 94102

Court of Appeal, Fourth District
Division Two
303 West Third Street
San Bernardino, California 92401

Honorable John Neblett
Judge of the Superior Court
Courthouse
Riverside, California 92502

Byron C. Morton
District Attorney's Office of the
County of Riverside
Courthouse
Riverside, California 92502

Each said envelope was then sealed and deposited in the United States Mail at San Bernardino, California.

I declare the foregoing to be true and correct under penalty of perjury.

Executed on OCT 26 1971 at San Bernardino, California.

Marlee Gibbon

MARLEE GIBBON